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[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

BCS/145174

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 08, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Ozaukee County Department of Social Services in regard to Medical Assistance, a hearing was held on December 18, 2012, at Port Washington, Wisconsin.

The issue for determination is whether the agency properly determined that petitioner was not eligible for BadgerCare Plus coverage based on the availability of other insurance.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Pahoua Vang, ESS  
Ozaukee County Department of Social Services  
121 W. Main Street  
PO Box 994  
Port Washington, WI 53074 -0994

**ADMINISTRATIVE LAW JUDGE:**

Michael A. Greene  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Ozaukee County.
2. Petitioner submitted a health care renewal form on September 27, 2012.

3. Petitioner's employer verified wages of \$7.35 an hour for five hours per month (Exhibit 1). Petitioner's spouse's employer verified wages of \$18.25 per hour for forty hours per week (Exhibit 2). Petitioner's spouse's employer also verified that health insurance as available to employees at a single rate of \$160 per month and at \$480 per month for individual and spousal coverage (Exhibit 3).
4. On October 30, 2012, the agency sent petitioner a notice of decision advising her that her Medical Assistance coverage would end due to the availability of insurance through her husband's employer (Exhibit 4).

### **DISCUSSION**

Wisconsin's Medical Assistance (MA) is a series of programs that provides basic and necessary health care coverage to various portions of the state's population. In general, BadgerCare Plus is reserved for children under 19, pregnant women and those who are caretakers of children under 19. In certain circumstances, adults without children can be eligible for BadgerCare Plus coverage.

One of the eligibility requirements for BadgerCare Plus is that the applicant not have access or current coverage under an employer-provided health care plan, *BadgerCare + Eligibility Handbook*, Ch. 7, ¶7.4.1. There are two tests for access to insurance coverage: whether the employer pays 80% or more of the premium cost and whether the premium for individual coverage exceeds 9.5% of household income.

As to the 9.5% test,

For parents and caretakers who are not exempt (See [7.1](#)), an individual with current access to employer sponsored health insurance is not eligible for BadgerCare Plus. An individual has current access to employer sponsored insurance if:

- the individual could enroll in and be covered under the plan in the month for which eligibility is being determined, **and**
- The cost of coverage for the employee-only plan does not exceed 9.5% of the monthly household income.

*BadgerCare + Eligibility Handbook*, Ch. 7, ¶7.3.3. The problem with the agency's position is that there is no evidence that petitioner's husband could have enrolled in his employer's health care plan and had coverage during the month for which eligibility was being determined. There is no question that the cost of coverage under the employee-only plan is less than 9.5% of household income.

### **CONCLUSIONS OF LAW**

Where the evidence did not show that an employee could have enrolled in his employer's health care plan for a premium less than 9.5% of household income and had coverage for the month of eligibility determination, the agency has not proven that the employee and his spouse are ineligible for BadgerCare Plus coverage under the 9.5% rule.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the agency with instructions to enroll petitioner and spouse in BadgerCare Plus, subject to all other eligibility requirements being met, effective December 1, 2012. This action shall be taken within ten (10) days of the date of this decision.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 6th day of February, 2013

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\sMichael A. Greene  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 6, 2013.

Ozaukee County Department of Social Services  
Division of Health Care Access and Accountability